

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 4:13CR00523 AGF
)
ALBERT D. HUNT,)
)
Defendant.)

ORDER

This matter is before the Court on the parties=pretrial motions. All pretrial motions were referred to United States Magistrate Judge Noelle C. Collins under 28 U.S.C. 636(b). Defendant Albert D. Hunt filed a motion to suppress evidence seized pursuant to a search warrant, based on his contention that the warrant was not supported by probable cause, was based on stale information, and lacked the required particularity. (Doc. No. 33). Defendant also filed a motion for disclosure pursuant to Rules 404(b) and 609 of the Federal Rules of Evidence (Doc. No. 40), and a motion for the disclosure of favorable, exculpatory and impeaching information (Doc. No. 41). The case is set for trial during the three-week period beginning August 4, 2014.

Judge Collins held a hearing on the motions on April 7, 2014. Counsel for the parties advised the Court that they would not present any testimony, and they agreed that the motions could be submitted on the pleadings, including the search warrant package that appears in Doc. No. 34-1. Judge Collins thereafter issued an Order and Report and Recommendation (“R&R”), in which she granted in part and denied in part Defendant’s

two motions for disclosure. She also recommended that the motion to suppress be denied. (Doc. No. 47.)

No objections were filed with respect to the ruling on the two motions for disclosure, and the time to do so has expired. As such, Judge Collins' Order regarding the motions for disclosure shall be sustained and adopted.

Defendant filed objections to the recommendation in the R&R that the motion to suppress be denied. The objections were general, simply asserting that Defendant objected to the findings of fact and corresponding legal conclusions, and incorporating the arguments in Defendant's previously filed motions to suppress.

When a party objects to a Report and Recommendation concerning a motion to suppress in a criminal case, the court is required to ~~A~~make a de novo review determination of those portions of the record or specified proposed findings to which objection is made.~~=@~~ *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003) (quoting 28 U.S.C. ' 636(b)(1)).

The Court conducted a *de novo* review of the motion to suppress, including listening to the hearing and review of the search warrant and related documents. As noted in the R&R, the decision of a Magistrate Judge to issue a warrant is entitled to great deference, and the question presented on review is whether the Magistrate Judge who issued the warrant had a "substantial basis" for concluding that probable cause existed. *Illinois v. Gates*, 462 U.S. 213, 236, 238-39 (1983); *United States v. Butler*, 594 F.3d 955, 963 (8th Cir. 2010). Based on that review, the undersigned concludes that the Magistrate Judge made proper factual findings and correctly analyzed the issues.

For the reasons stated in the R&R, the Court finds that the Magistrate Judge had a substantial basis for concluding that probable cause existed, as the officers had recent information from a confidential informant, whom officers met in person, and the informant's information was corroborated in various ways, including a controlled buy. The Court also rejects Defendant's arguments that the information was stale, and agrees the warrant was timely executed and any delay did not render the warrant stale. The Court also agrees that the warrant did not lack sufficient particularity. The residence was properly described, a photograph was attached, and the items to be seized were specifically itemized and described.¹

The Court therefore adopts the R&R and overrules Defendant's objections regarding the motion to suppress.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge [Doc. #47] is **SUSTAINED, ADOPTED, AND INCORPORATED** herein.

IT IS FURTHER ORDERED that Defendant's Motion to Suppress Evidence (Doc. No. 33) is **Denied**.

¹ The items to be seized were described as: "'BA,' crack cocaine, or any other illegal narcotic, U.S. currency, Drug Transaction Records, Tech 9, or any other firearm, and any other instrumentalities of the crime," which crime, in turn, was described as illegal possession and sale of narcotics and unlawful possession of a firearm.

IT IS FURTHER ORDERED that Defendant's Motion for Disclosure Pursuant to Rules 404(b) and 609 of the Federal Rules of Evidence (Doc. No. 40) is **granted in part and denied in part as moot.**

IT IS FURTHER ORDERED that Defendant's Motino for Disclosure of Favorable, Exculpatory, and Impeaching Information (Doc. No. 41) is **granted in part and denied in part.**

A final pretrial conference will be scheduled by separate Order.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 26th day of June, 2014.